

## **NEW HAMPSHIRE LAKES ASSOCIATION**

### ***Comprehensive Shoreland Protection Act: Problems and Solutions***

The state of New Hampshire has designated over 900 bodies of water ten acres and larger as state-owned public waters, held in trust by the General Court for use by the public. The State owns the water and the “land” beneath the water up to the high water mark. Moreover, the state is charged with protecting the Public Trust in perpetuity, while permitting all reasonable uses for the benefit of both the shorefront property owner and the public at large.

As part of its duty to preserve the Public Trust, the State recognizes that certain uses of the shoreland can impair water quality and hence should not be permitted. The Comprehensive Shoreland Protection Act (CSPA) took effect in 1994 to protect water quality by setting minimum standards and requirements for the development, use and subdivision of land within 250 feet of the water’s edge. The intent of the CSPA is to prevent soil and other pollutants from entering a lake or pond, thus protecting water quality.

Soil and pollutants such as fertilizers and discharge from faulty septic systems provide nutrients to the lake that can decrease water clarity, quality, and also increase plant growth (among other impacts). These in turn can degrade the ecological, recreational, aesthetic and economic value of our public waters. A natural, vegetated buffer zone consisting of trees, shrubs and ground cover is the single most effective strategy in preventing surface run-off and hence maintaining lake water quality.

While some may consider the CSPA an unnecessary burden on shorefront property owners due to its regulations and restrictions, it is important to remember that **the CSPA is the only statute that protects this vital natural resource for both the waterfront property owner and the general public.** If water quality becomes degraded, then property values decline and the recreational and ecological value of the lake or pond is compromised.

We must ensure that the CSPA is un-ambiguous, comprehensive (addressing all potential impacts to public waters), and enforceable. To do otherwise is to act irresponsibly, and thereby jeopardize the value of the Public Trust for the use and enjoyment of future generations.

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*Based on direct observations, anecdotal information, and sound science, the New Hampshire Lakes Association (NHLA) has identified five major problems with the existing Comprehensive Shoreland Protection Act (RSA 483-B).*

*Below, each problem is briefly described, followed by our recommended solution. In all cases the “solution” is designed to result (ultimately) in heightened water quality protection – which is the mission of NHLA.*

#### **1. Problem: Lack of enforcement and funding**

- DES has one enforcement person covering the shorelands of 976 lakes and ponds

#### **Solution**

- Be proactive. Enact a permitting process, similar to the wetlands permitting process, in which the town receives the application first and then sends copies to the local conservation commission, the zoning board of adjustment, and to DES for review. Once DES signs off on the application, the town can move forward with issuing the permit. There would be a \$200 application fee, passed on to the applicant. A portion of the fee would go to the town and the remainder would go to DES. This would help fund additional DES staff, who could then act on enforcing the CSPA. This proposed permitting system may also help the towns fund appropriately trained code enforcement officers to help enforce the CSPA.

#### **2. Problem: Lack of understanding, communication and cooperation between local and state entities**

- “An ounce of prevention is worth a pound of cure.” Town officials need to be educated, as few local policy-makers understand the extent of their local jurisdiction versus the state’s jurisdiction with regard to the CSPA. While DES recognizes the need for more education and outreach, it has only one staff person dedicated to this activity.

#### **Solution**

- Earmark some of the money raised from the proposed permitting process for education, thus providing additional DES staff for this purpose.
- Engage other groups, such as NHLA, in education and outreach. For example, NHLA is moving forward on procuring funding for a new Education Outreach Director position. This person would work collaboratively with DES in educating towns and local lake associations on the CSPA (among other activities). DES is very supportive of NHLA “sharing the work load” as is the Governor’s office.

3. **Problem: Confusing and ambiguous terms and language**

- Calculating basal area for removal of trees is confusing.
- There is no limit on nonconforming undeveloped lots.

**Solution**

- Remove all language referring to basal area. It is confusing and was meant for large forestry tracks spanning hundreds or even thousands of acres. The language was not meant for 1 or 2 acre lots designed for residential development.
- Establish a 10 % maximum on impervious surfaces within 250 of the shoreline. Impervious surfaces include roads, driveways, all buildings, and certain landscaping such as patio stones. Most scientific studies indicate that lots consisting of more than anything greater than 10% impervious surfaces within the watershed results in a decrease in water quality.

4. **Problem: Lack of a defined state-wide shoreland vegetative buffer zone**

- Currently, there is no vegetative buffer requirement in the CSPA.

**Solution**

- Eliminate the 50 foot setback and in its place enact a state-wide shoreland buffer provision, or a vegetative “no-cut” zone, which prohibits the removal of all trees, shrubs, and groundcovers. This will provide needed protection against run-off. NHLA recommends a 75 foot buffer or “no-cut” zone, which would be consistent with other statutes dealing with shoreland setbacks (i.e., septic systems have a minimum 75 ft setback) A maximum 6 foot wide meandering, unpaved path to the shoreline would be allowable to access the water.

5. **Problem: Dug-in boathouses conflict with the intent of the CSPA**

- Digging into the shoreline creates an irreversible impact to our public waters and potentially impairs water quality.
- Milfoil and other exotic weeds are more likely to take root in a disturbed lake bottom.
- It makes no sense to mandate a 50 foot setback for primary structures if we are going to allow 900 sq ft structures with roofs, siding, decking and foundations to sit directly on the shoreline and into the lake? This situation is completely contrary to the development standards in the Comprehensive Shoreland Protection Act.

**Solution**

- Ban dug-in boathouses in the CSPA.